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10/529,329

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Hendricus Antonius Hoogland

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT

PAPER NUMBER

3637

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/529,329 | Applicant(s) HOOGLAND, HENDRICUS ANTONIUS | |
| | Examiner TIMOTHY M. AYRES | Art Unit 3637 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7 and 10-30 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 and 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,10-12,19,20 and 24-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/02/09 has been entered.

Claim Rejections—35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure does not expressly or inherently recite that the second supporting means are loosely retained by said cross-supports.

Claim Rejections—35 USC § 102

1. Claims 1, 5-7, 10-12, 19, 20, 24, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 3,880,092 to Seeber. Seeber teaches a plastic pallet having a top deck supported by three stringers with bearing elements extending upward. A first support means (34) is parallel and in the same plane as the stringer. Second supporting means (30,28) are located in a second plane within the cross support. Please note that there presently is no language presented in the claims that defines the cross support, stringer, deck, and bearing elements to be formed as separate entities and therefore it is the portions of the plastic piece that define each element. Regarding claim 27, the cross support is molded about said second supporting means and is considered retained in a similar level and manner as disclosed in this application.

2. Claims 1, 5-7, 10-12, 19, 20, 24, 25, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,735,154 to Hemery. Hemery teaches a plastic pallet having a top deck support by stringers (14, 44, 13) with bearing elements (8, 18, 28, 38, 48, 58, 68, 78, 88) extending upward. A first supporting means (10, B, C, D) are located in the same plane as the stringers. Second supporting means (10, A, E) are located within cross supports in a second plane. Regarding claim 27, the second supporting means is slid into said cross support and is therefore considered to be loosely retained.

3. Claims 1-7, 10-12, 19, 20, 24, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,868,080 to Wyler. Wyler teaches a plastic pallet having a deck supported by three stingers with bearing extending upward. A first support means (32) is located in the bottom as seen in figure 11. A second support means (32) is located at the bottom of the deck as seen in figure 7E and 7B. In the specification Wyler states that such supporting elements as shown in individual configurations in the drawings can also be concurrently combined (Wyler '080, Col. 5, lines 56-61). Regarding claim 27, the second supporting means is slid into said cross support and is therefore considered to be loosely retained.

1. Claims 1, 5-7, 10, 12, 19, 20, 24, 27, 29 and 30, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Apps, US patent 6,955,128. Apps teaches a pallet (10) having a top deck (12) and a bearing construction (14) both made of plastic (col. 5, lines 47-51); the bearing construction having stringers (136) extending in a longitudinal direction and having bearing elements (126) thereon, and cross supports (132) at right angles to the stringers; first (158,154) and second (160,161) supporting means, the first supporting means extending parallel to the stringers in the bearing construction and the second supporting means extending parallel to the cross supports.

Regarding claims 2-7, the first and second supporting means are manufactured from metal or plastic (col. 7, lines 8-15), prevent creep in the top deck and bearing

construction, have a higher modulus of elasticity than the top deck and bearing construction, and enhance the rigidity of the top deck.

4. Claims 1, 5-7, 10-12, 19, 20, 24, 25, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,622,642 to Ohanesian. Ohanesian teaches a plastic pallet having a top deck support by stingers (270) with bearing elements (310) extending upward. A first supporting means (120) are located in the same plane as the stringers. Second supporting means (120) are located within cross supports in a second plane and are perpendicular to said first support means.

Claim Rejections—35 USC § 103

5. Claims 1, 5-7, 10-12, 19, 20, 24, and 27-30 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication 2003/0110990 to Apps in view of US Patent 5,868,080 to Wyler. Apps '990 teaches an embodiment of a pallet (fig. 14-16) that comprises second supporting means (111) retained in integrally formed cross support and bearing construction as substantially claimed. Apps '990 does not expressly disclose a first supporting means. . Wyler teaches a plastic pallet having a deck supported by three stingers with bearing extending upward. A first support means (32) is located in the bottom as seen in figure 11. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the pallet of Apps '990 by adding the first supporting means as taught by Wyler to reinforce the strength of the pallet.

2. Claim 11, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps as applied to claim 10 above, and further in view of Koefeld. Apps discloses a pallet substantially as claimed, having supporting means confined in the plastic of a top deck and bearing construction, and teaches the use of an injection molding process in the construction of the pallet (col. 5, line 50), but does not specifically teach that the supporting means are injection molded in the pallet. Koefeld teaches a pallet (10) having a top deck (12) and bearing construction (14) molded from plastic, and supporting means (36, 38) substantially confined in the plastic of the top deck and bearing construction, further teaching that the supporting means are injection molded in the pallet (col. 4, lines 48–61). Thus Apps discloses a pallet upon which the claimed injection molding of the supporting means can be seen as an improvement, and Koefeld teaches a comparable pallet improved in the same way as claimed. One of ordinary skill in the art could have applied the known injection molding, as taught by Koefeld, in the same way to the pallet of Apps, with predictable results. Regarding claim 26, The Examiner is taking official notice that it is well known to add holes in reinforcing members that get covered in injected molded plastic so that the plastic bonds with plastic through the hole providing a more secure fit and less chance of the plastic peeling from the reinforcing member. Therefore at the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the pallet of Apps in view of Koefeld by adding through holes in the reinforcing members to bond the plastic better.

Response to Arguments

6. Applicant's arguments filed 9/02/09 have been fully considered but they are not persuasive. In regards to the argument towards the 112.1, the discussion of shrinkage in the specification refers to the plastic shrinking from cooling after molding and since the assembly of the supports (21) would be added after such shrinkage this does not imply that there is loose play between the second supporting means and the cross support. In addition the ease of removal has nothing to do with a "loose retention". The elements could be tightly fitted together and still be easily removed with a tool. Therefore the examiner is maintaining the rejection as this feature not being expressly or inherently disclosed.

7. It has been held that the term "integral" is sufficiently broad to embrace construction united by such means as fasteners and welding. It is suggested that the applicant use the phrases "integrally molded" or "integrally formed" to limit to constructions that are formed or molded together. The examiner considers the term "separable" to mean any structure that is capable of being separated by means such as unscrewing, cutting, melting, etc. Based on the arguments the examiner suggests that the applicant use a phrase such as "separately formed" or "separately molded" to mean that the constructions are not molded together. Alternatively the applicant could also provide the structure that makes the cross support and to deck separable. Therefore in light of these interpretations, the pallet of Seeber is capable of being separated by such means as cutting with a band saw. In response to applicant's argument that the

references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., first and second supports being fully enclosed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). To advance prosecution and in light of a future amendment to the term integral and separable the examiner has added a 103 rejection with Apps '990 in view of Wyler.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY M. AYRES whose telephone number is (571)272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./
Examiner, Art Unit 3637
9/28/2009

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637